

## § 238.51

## 12 CFR Ch. II (1–1–13 Edition)

company (other than an association acquired in a transaction pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

(7) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

(8) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

(9) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11 of HOLA and the Board's regulations promulgated thereunder.

(c) *Approval of acquisitions*—(1) *Criteria*. The Board, in deciding whether to approve or deny an application filed on the basis that it is a qualified stock issuance, shall apply the application criteria set forth in § 238.15(a), (b), and (c).

(2) *Additional capital commitments not required*. The Board shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Board or any other Federal agency having jurisdiction.

(3) *Other conditions*. The Board shall impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Board

determines to be appropriate, including—

(i) A requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Board may require; and

(ii) Such other conditions as the Board deems necessary or appropriate to prevent evasions of this section.

(4) *Application deemed approved if not disapproved within 90 days*. (i) An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Board if such application has not been disapproved by the Board before the end of the 90-day period beginning on the date of submission to the Board of the complete record on the application as defined in § 238.14(g)(3)(ii).

(d) *No limitation on class of stock issued*. The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

(e) *Application form*. A savings and loan holding company making application to acquire a qualified stock issuance pursuant to this subpart shall submit the appropriate form to the appropriate Reserve Bank.

### Subpart F—Savings and Loan Holding Company Activities and Acquisitions

#### § 238.51 Prohibited activities.

(a) *Evasion of law or regulation*. No savings and loan holding company or subsidiary thereof which is not a savings association shall, for or on behalf of a subsidiary savings association, engage in any activity or render any services for the purpose or with the effect of evading any law or regulation applicable to such savings association.

(b) *Unrelated business activity*. No savings and loan holding company or subsidiary thereof that is not a savings association shall commence any business activity at any time, or continue any business activity after the end of the two-year period beginning on the date on which such company received approval to become a savings and loan holding company that is subject to the

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limitations of this paragraph (b), except (in either case) the following:

(1) Furnishing or performing management services for a savings association subsidiary of such company;

(2) Conducting an insurance agency or an escrow business;

(3) Holding, managing, or liquidating assets owned by or acquired from a subsidiary savings association of such company;

(4) Holding or managing properties used or occupied by a subsidiary savings association of such company;

(5) Acting as trustee under deed of trust;

(6) Any other activity:

(i) That the Board of Governors of the Federal Reserve System has permitted for bank holding companies pursuant to regulations promulgated under section 4(c) of the Bank Holding Company Act; or

(ii) Is set forth in § 238.53, subject to the limitations therein; or

(7) (i) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if prior approval for the acquisition of such stock by such savings and loan holding company is granted by the Board pursuant to § 238.41.

(ii) Notwithstanding the provisions of this paragraph (b), any savings and loan holding company that, between March 5, 1987 and August 10, 1987, received approval pursuant to 12 U.S.C. 1730a(e), as then in effect, to acquire control of a savings association shall not continue any business activity other than those activities set forth in this paragraph (b) after August 10, 1987.

(c) *Treatment of certain holding companies.* If a director or officer of a savings and loan holding company, or an individual who owns, controls, or holds with the power to vote (or proxies representing) more than 25 percent of the voting shares of a savings and loan holding company, directly or indirectly controls more than one savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in paragraph (b) of this section, to the same extent such limitations apply to multiple savings

and loan holding companies pursuant to §§ 238.51, 238.52, 238.53, and 238.54.

### **§ 238.52 Exempt savings and loan holding companies and grandfathered activities.**

(a) *Exempt savings and loan holding companies.* (1) The following savings and loan holding companies are exempt from the limitations of § 238.51(b):

(i) Any savings and loan holding company (or subsidiary of such company) that controls only one savings association, if the savings association subsidiary of such company is a qualified thrift lender as defined in § 238.2(k).

(ii) Any savings and loan holding company (or subsidiary thereof) that controls more than one savings association if all, or all but one of the savings association subsidiaries of such company were acquired pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and all of the savings association subsidiaries of such company are qualified thrift lenders as defined in § 238.2(k).

(2) Any savings and loan holding company whose subsidiary savings association(s) fails to qualify as a qualified thrift lender pursuant to 12 U.S.C. 1467a(m) may not commence, or continue, any service or activity other than those permitted under § 238.51(b) of this part, except that, the Board may allow, for good cause shown, such company (or subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations set forth in § 238.51(b) of this part: *Provided*, That effective August 9, 1990, any company that controls a savings association that should have become or ceases to be a qualified thrift lender, except a savings association that requalified as a qualified thrift lender pursuant to section 10(m)(3)(D) of the Home Owners' Loan Act, shall within one year after the date on which the savings association fails to qualify as a qualified thrift lender, register as and be deemed to be a bank holding company, subject to all of the provisions of the Bank Holding